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FLIESLER MEYER, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111			PHAM, THOMAS K	
			ART UNIT	PAPER NUMBER
			2121	

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/829,524	SMITH, STEVEN J.	
	Examiner Thomas K. Pham	Art Unit 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,5-11,13-16 and 18-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1, 3, 5-11, 13-16 and 18-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Response to Amendment

1. This action is in response to request for re-consideration filed on 1/3/2006.
2. Claims 1, 3, 5-11, 13-16 and 18-42 are pending.

Quotations of U.S. Code Title 35

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim Rejections - 35 USC § 102

5. Claims 1, 3, 5-7, 10, 11, 13-16, 20-25, 31-32, 34-35, 37 and 39-42 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,671,715 ("Langseth").

Regarding claim 1

Langseth teaches a method for transmitting electronic messages comprising:

- generating a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 16 lines 19-26);
- allocating a plurality of independent electronic mail delivery resources (FIG. 5, "Data distribution servers") wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);
- **initiating a primary electronic mail transmission process in a first computer (see Col. 12 lines 50-55, "nerve center system 44 (first computer) initiates a primary transmission process"), wherein the first computer is capable of communicating with the plurality of electronic mail delivery resources (see Col. 12 lines 37-49, "nerve center system 44 communicates with data distribution servers 62 (delivery resources) for sending email messages to users");**
- providing separate ones of the plurality of lists or groups of the plurality of lists to the plurality of electronic mail delivery resources (col. 16 lines 26-32);
- creating the electronic mail messages by the plurality of electronic mail delivery resources based on the lists and on generic message content data (col. 5 lines 14-17); and

- transmitting the electronic mail messages with the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9); and
- **verifying that an electronic mail message has been sent to each addressee set forth in the list of mailing addresses (col. 24 lines 30-41).**

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claim 11

Langseth teaches a system for transmitting electronic messages comprising:

- a means for generating a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 16 lines 19-26);
- a means for allocating a plurality of independent electronic mail delivery resources (FIG. 5, “Data distribution servers”) wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);
- **a first computer for initiating a primary electronic mail transmission process (see Col. 12 lines 50-55, “nerve center system 44 (first computer) initiates a primary transmission process”), wherein the first computer is capable of communicating with the plurality of electronic mail delivery resources (see Col. 12 lines 37-49,**

“nerve center system 44 communicates with data distribution servers 62 (delivery resources) for sending email messages to users”);

- a means for providing separate ones of the plurality of lists or groups of the plurality of lists to the plurality of electronic mail delivery resources (col. 16 lines 26-32);
- a means for creating the electronic mail messages by the plurality of electronic mail delivery resources based on the lists and on generic message content data (col. 5 lines 14-17); and
- a means for transmitting the electronic mail messages with the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9); and
- **a means for reviewing mail transmission progress information generated by the electronic mail delivery resources (col. 24 lines 30-41).**

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claim 21

Langseth teaches a machine readable medium having instructions stored thereon to cause a system to:

- generate a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 16 lines 19-26);

- allocate a plurality of independent electronic mail delivery resources (FIG. 5, “Data distribution servers”) wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);
- provide separate ones of the plurality of lists or groups of the plurality of lists to the plurality of electronic mail delivery resources (col. 16 lines 26-32);
- create the electronic mail messages based on the lists and on generic message content data wherein the creation is by the plurality of electronic mail delivery resources (col. 5 lines 14-17); and
- transmit the electronic mail messages with the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9).

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claim 22

Langseth teaches a method for transmitting electronic messages comprising:

- generating a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 16 lines 19-26), wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);

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- providing separate ones of the plurality of lists or groups of the plurality of lists to the plurality of electronic mail delivery resources (col. 16 lines 26-32);
- wherein each of the plurality of electronic mail delivery resources can create the electronic mail messages based on the lists and on generic message content data (col. 5 lines 14-17); and
- wherein the electronic mail messages can be transmitted by the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9).

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claim 23

Langseth teaches a machine readable medium having instructions stored thereon to cause a system to:

- generate a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 16 lines 19-26); wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);
- provide separate ones of the plurality of lists or groups of the plurality of lists to the plurality of electronic mail delivery resources (col. 16 lines 26-32);

- wherein each of the plurality of electronic mail delivery resources can create the electronic mail messages based on the lists and on generic message content data (col. 5 lines 14-17); and
- wherein the electronic mail messages can be transmitted by the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9).

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claim 24

Langseth teaches a system for transmitting electronic messages comprising:

- a plurality of lists of mailing addresses, each of said lists containing a portion of a primary mailing list (col. 3 lines 14-21);
- a plurality of electronic mail delivery resources (FIG. 5, “Data distribution servers”) each capable of receiving one of the plurality of lists (col. 16 lines 26-32) and each capable of working in parallel (col. 14 lines 8-15) to perform:
 - o generating the electronic mail messages from generic message content data (col. 5 lines 14-17) and
 - o transmitting the generated electronic mail messages to addressees in one of the plurality of lists (col. 9 lines 1-9)

- wherein the number of electronic mail delivery resources is estimated to satisfy a target delivery time (col. 3 lines 26-29).

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the “jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5)..

Regarding claim 41

Langseth teaches a fault-tolerant method for transmitting electronic messages comprising the steps of:

- allocating a plurality of independent electronic mail delivery resources (FIG. 5, “Data distribution servers”) wherein plurality of electronic mail delivery resources are capable of processing separate ones of the plurality of lists in parallel (col. 14 lines 8-15);
- creating the electronic mail messages by the plurality of electronic mail delivery resources based on the lists and on generic message content data (col. 5 lines 14-17);
- transmitting the electronic mail messages with the plurality of electronic mail delivery resources to addressees contained in the lists sent to the plurality of electronic mail delivery resources (col. 9 lines 1-9); and
- restarting any stalled or failed electronic mail delivery resource wherein the restarting is from a check point (col. 19 lines 42-46).

It should be noted that Langseth teaches distributing and splitting of multiple jobs in a data delivery server such as an e-mail delivery server (see col. 3 lines 22-26). It is inherent for the

“jobs” in an e-mail delivery server to be at least the e-mail messages with plurality of lists of mailing addresses, wherein each of the lists at least dedicates to a selected terminal device such as a pager, e-mail, telephone, fax, HTML mail, or other delivery method (see col. 9 lines 1-5).

Regarding claims 3 and 13

Langseth teaches the first computer is a database server containing the lists of mailing addresses (col. 12 lines 11-20).

Regarding claims 4, 14 and 42

Langseth teaches verifying that an electronic mail message has been sent to each addressee set forth in the lists of mailing addresses (col. 19 lines 42-48).

Regarding claims 5 and 15

Langseth teaches partitioning a primary mailing list into the plurality of lists of mailing addresses (col. 16 lines 20-26).

Regarding claims 6 and 16

Langseth teaches designating at least one bounced mail resource capable of receiving any bounced messages or replies (col. 19 lines 42-45, “Queue”); and wherein the at least one bounced mail resource is capable of providing delivery failure information in a compact form (col. 19 lines 46-50).

Regarding claims 10 and 20

Langseth teaches primary mailing list is stored at a location separated from the plurality of electronic mail delivery resources (col. 16 lines 14-16).

Regarding claim 25

Langseth teaches the number of electronic mail delivery resources is based on the number of addressees in the primary mailing list (col. 15 lines 47-52).

Regarding claims 31 and 39

Langseth teaches an independent electronic mail delivery resource in the plurality of independent electronic mail delivery resources can be one of: a mail transfer agent, an independent computing device, and a process (see FIG. 5).

Regarding claims 32 and 40

Langseth teaches the number of electronic mail transmission resources is estimated to satisfy a target delivery time (col. 3 lines 26-29).

Regarding claim 34

Langseth teaches transmitting the generic message content data to at least one of the plurality of electronic mail delivery resources (see FIG. 5).

Regarding claims 35 and 37

Langseth teaches the plurality of electronic mail delivery resources is located on a first local network (col. 16 lines 14-16); and wherein the lists and the generic message content data are transmitted from a second local network to the first local network (FIG. 5 shows the generic messages are transmitted from the data distribution servers 62).

Claim Rejections - 35 USC § 103

6. Claims 9, 19, 26-27, 30, 33, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth in view of U.S. Patent No. 5,937,162 (“Funk”).

Regarding claims 9 and 19

Langseth does not specifically teach automatically updating the primary mailing list based on returned mail information.

However, Funk teaches automatically updating the primary mailing list based on returned mail information (see col. 15 lines 21-25) for the purpose of effectively and automatically handled bounce e-mail messages (see col. 3 lines 38-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the handling of bounce e-mail messages of Funk with the system of Langseth because it would provide for the purpose of effectively and automatically handled bounce e-mail messages.

Regarding claim 26

Langseth does not specifically teach one or more bounced mail resources capable of modifying the primary address list based on failed delivery of electronic mail messages.

However, Funk teaches automatically updating the primary mailing list based on returned mail information (see col. 15 lines 21-25) for the purpose of effectively and automatically handled bounce e-mail messages (see col. 3 lines 38-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the handling of bounce e-mail messages of Funk with the system of Langseth because it would provide for the purpose of effectively and automatically handled bounce e-mail messages.

Regarding claim 27

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Langseth does not specifically teach the plurality of lists of mailing addresses is determined based on recognizing that a number of members of the primary address list reside in a common network.

However, Funk teaches the plurality of lists of mailing addresses is determined based on recognizing that a number of members of the primary address list reside in a common network (col. 3 lines 63-67) for the purpose of efficiently controlling e-mail delivery to a plurality of destination hosts (see col. 3 lines 59-63).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the organizing method of Funk with the system of Langseth because it would provide for the purpose of efficiently controlling e-mail delivery to a plurality of destination hosts.

Regarding claim 30

Funk teaches one or more request processing resources capable of processing requests for changes to the primary mailing list (col. 15 lines 10-20).

Regarding claim 33

Funk teaches the allocating can be delayed until the plurality of independent electronic mail delivery resources are available (col. 14 lines 34-42).

Regarding claims 36 and 38

Funk teaches designating at least one request processing resource capable of processing requests for changes to the primary mailing list (col. 15 lines 21-25); and wherein the at least one request processing resource is capable of providing subscription change information in a compact form (col. 15 lines 14-20).

7. Claims 8, 18, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth in view of U.S. Patent No. 5,835,762 ("Gans").

Regarding claims 8 and 18

Langseth does not teach restarting any stalled or failed electronic mail delivery resource identified in the viewing and wherein the restarting is from a checkpoint.

However, Gans teaches a system for processing electronic mail in parallel including a guardian process capable of examining system information periodically to initiate, restart, or stop one or more resources (col. 8 lines 26-30, "the guardian process retains ... stop one or more processes") for the purpose of identifying and assisting the process in determining how to proceed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the guardian process of Gans with the system of Langseth because it would provide for the purpose of identifying and assisting the process in determining how to proceed.

Regarding claim 28

Langseth does not teach an electronic mail delivery resource in the plurality of electronic mail delivery resources is automatically restarted if it stalls or fails.

However, Gans teaches an electronic mail delivery resource in the plurality of electronic mail delivery resources is automatically restarted if it stalls or fails (col. 8 lines 26-30, "the guardian process retains ... stop one or more processes") for the purpose of identifying and assisting the process in determining how to proceed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the guardian process of Gans with the system of Langseth because it would provide for the purpose of identifying and assisting the process in determining how to proceed.

Regarding claim 29

Langseth does not teach a check point system capable of restarting any stalled or failed electronic mail delivery resource in the plurality of electronic mail delivery resources.

However, Gans teaches a guardian process (checkpoint system) capable of restarting any stalled or failed electronic mail delivery resource in the plurality of electronic mail delivery resources (col. 8 lines 26-30, “the guardian process retains ... stop one or more processes”) for the purpose of identifying and assisting the process in determining how to proceed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the guardian process of Gans with the system of Langseth because it would provide for the purpose of identifying and assisting the process in determining how to proceed.

Response to Arguments

8. Applicant should submit an argument under the heading “Remarks” pointing out disagreements with the examiner’s contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (571) 272-3689, Monday to Thursday from 6:30 AM - 5:00 PM EST or contact Supervisor *Mr. Anthony Knight* at (571) 272-3687.

Thomas Pham
Patent Examiner



March 1, 2006



Anthony Knight
Supervisory Patent Examiner
Group 3600